

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Adoption of its 2003 Energy Resource Recovery Account (ERRA) Revenue Requirement Estimate, its ERRA Trigger Mechanism Proposal, and its ERRA Trigger Amount. (U 39 E)

Application 03-02-002
(Filed February 3, 2003)

**ADMINISTRATIVE LAW JUDGE'S RULING REGARDING VARIOUS
MOTIONS AND NOTICE OF PREHEARING CONFERENCE**

Summary

On February 3, 2003, Pacific Gas and Electric Company (PG&E) filed its application for the adoption of its 2003 Energy Resource Recovery Account (ERRA) revenue requirement estimate, and its ERRA trigger amount.

Concurrent with the filing of its application, PG&E also filed a motion for a protective order, and a motion "for authority to file and maintain confidential, commercially sensitive, proprietary information, contained in the testimony exhibit accompanying the application and identified in Section V thereof, under seal."

The Office of Ratepayer Advocates (ORA) filed a protest to PG&E's application, and The Utility Reform Network (TURN) filed a response to PG&E's motion to file certain information under seal. Southern California Edison Company (SCE) filed a motion to intervene and to reply to TURN's response.

Today's ruling sets a prehearing conference for May 19, 2003 at 10:00 a.m. In addition, the ruling grants PG&E's motion for a protective order and its

motion to file certain information under seal, as described in this ruling. The ruling also grants SCE's motion to intervene and to reply to TURN's response to PG&E's motion.

Background

PG&E's ERRA application was filed in response to the Commission's directives in Decision (D.) 02-10-062 and D.02-12-074. A redacted version of PG&E's testimony in support of the ERRA application was served on the service list in R.01-10-024. An unredacted version of PG&E's supporting testimony was filed under seal with the Commission, accompanied by PG&E's motion to keep this information under seal and a motion for a protective order.

ORA filed a protest to PG&E's ERRA application on March 6, 2003. The protest "questions PG&E's proposed procurement level and the accuracy of PG&E's proposed trigger level." ORA also states that "it is important to establish an accurate revenue requirement for the forecast period," and that it plans "to critically evaluate PG&E's assumptions, and may present an alternate forecast based on different assumptions." (Protest, pp. 1, 4.)

PG&E's motion for a protective order seeks to set forth the conditions under which non-market parties to the proceeding may obtain access to "a) confidential, market-sensitive, proprietary procurement information, and b) computer models, databases, programs and input data set formats PG&E used in support of testimony filed in this application." (Motion for Protective Order, p. 1.) Attached to the motion for the protective order was a copy of the protective order issued in R.01-10-024, and a proposed protective order for this proceeding. Paragraphs 1 through 18 of the proposed protective order contain provisions which are similar to what was contained in the R.01-10-024 protective order. Paragraphs 19 through 30 of the proposed protective order have no

similar provisions in the protective order issued in R.01-10-024. No one filed any response to PG&E's motion for a protective order.

PG&E's motion to file certain information under seal is composed of the motion and PG&E's unredacted testimony in support of its application. The unredacted testimony was submitted to the Commission under seal. PG&E's motion states that the unredacted testimony contains "commercially sensitive, confidential and proprietary information on PG&E's electric energy resources and PG&E's plans throughout the test period for managing its power resources to meet customer needs on a least cost basis." PG&E seeks to protect this information by having the assigned ALJ grant its motion to keep the information under seal.

On February 18, 2003, TURN filed a response to PG&E's motion to file certain information under seal. TURN contends that most of the information that PG&E seeks to file under seal should not be filed under seal, and that PG&E should be required to refile its application without the redactions. TURN agrees that some of the proposed redactions that PG&E seeks to file under seal are appropriate. TURN's response includes an appendix of which information TURN believes should not be filed under seal.

On February 28, 2003, SCE filed its motion to intervene so it could reply to TURN's February 18, 2003 response. SCE "supports PG&E's request to keep confidential, commercially sensitive and proprietary information under seal." (SCE Motion, p. 1.) No one filed any response to SCE's motion to intervene.

PG&E filed its reply to TURN's response on February 28, 2003. PG&E's reply "agrees with some, but not all, of the points raised in TURN's response." (Reply, p. 1.) PG&E's reply also contains a table of "every redaction in PG&E's redacted ERRA testimony, and sets forth PG&E's current position on whether the

material should be maintained as confidential ..." as discussed in its reply. The table provides a comparison as to whether PG&E agrees to TURN's list of which items in the testimony supporting the ERRA application should be unredacted, or if PG&E believes that certain items should be kept under seal.

Notice of Prehearing Conference

A prehearing conference will be held on May 19, 2003 at 10:00 a.m. in San Francisco to discuss the scope of issues to be covered in this proceeding, whether hearings are necessary, and the schedule to process this application. The prehearing conference will also establish the service list for this proceeding. PG&E and the other parties interested in this proceeding may file a prehearing conference statement on these topics. Anyone who plans to file a prehearing conference statement shall file the statement with the Docket Office and serve it on the R.01-10-024 service list on or before May 14, 2003. An electronic copy of the prehearing conference statement shall also be transmitted to the undersigned (jsw@cpuc.ca.gov).

Motion to Intervene

SCE's motion to intervene focuses on replying to TURN's response to PG&E's motion, rather than why it should be allowed to participate in this proceeding. SCE favors the issuance of the protective order that PG&E requests, and points out that a similar type of protective order was issued in R.01-10-024. SCE's motion also attached its "comments on the classification and protection of confidential information" that it filed in R.01-10-024 on February 24, 2003. Those comments provide the reasons why SCE believes that certain information should be kept confidential.

SCE's motion to intervene in this proceeding will be granted, and SCE's reasons in support of PG&E's motion for a protective order and to keep certain

information confidential will be considered in deciding whether PG&E's motions should be granted or denied.

Motion for a Protective Order

PG&E seeks the issuance of a protective order so that access by non-market participants to confidential information, computer programs, and data are restricted and kept confidential. PG&E and SCE point out that a similar protective order was issued in R.01-10-024. Aside from SCE, no one else commented on PG&E's motion for a protective order.

PG&E's motion contains a proposed protective order. PG&E's proposed protective order has been compared to the protective order that was issued in R.01-10-024. Many of the provisions of the proposed protective order are similar to the protective order that was issued in R.01-10-024. PG&E's proposed protective order is more expansive than the R.01-10-024 protective order because it addresses "Protected Computer Program Material" in numbered paragraphs 19 to 30.

Due to the nature of this proceeding, it is expected that certain data will be confidential. In order to provide a non-market participating party reviewing representative with access to the confidential information and to the computer resources and data, a protective order should be put into place so that these participants are aware of how this data and resources should be handled. Consistent with Public Utilities Code § 454.5(g), PG&E's motion for a protective order should be granted. Appended to this ruling is Attachment 1, which is the "Protective Order Regarding Confidentiality of Pacific Gas and Electric Company's Energy Resource Recovery Account Information." Attachment 1 shall serve as the protective order for this proceeding.

Motion to File Certain Information Under Seal

PG&E's unredacted testimony in support of the ERRA application contains numerous redactions. TURN's response points out that much of the information contained in the redactions has already been made public in other proceedings or filings. PG&E's table that was attached to its reply reflects an acknowledgement that much of the redacted information has in fact been publicly disclosed.

PG&E's table has been compared to TURN's appendix of which information in PG&E's ERRA testimony should not be redacted, and to the unredacted testimony that was submitted under seal by PG&E. The arguments of PG&E, SCE and TURN regarding which information should be kept confidential have also been considered. PG&E's motion to file certain information under seal, as contained in the unredacted testimony in support of the ERRA application is granted as follows. PG&E's table in its reply to TURN's response shall serve as the guide to which information contained in the testimony supporting PG&E's ERRA application shall remain redacted, and which portions of the testimony shall be unredacted. With regard to any information that may be updated during the course of this proceeding, if PG&E decides that the updated information should be maintained as confidential, any other party may still challenge whether that updated information should be made public. Since the unredacted testimony in support of PG&E's ERRA application contains information which shall remain under seal, that document shall remain sealed.

PG&E shall file its revised testimony in support of its ERRA application reflecting the information PG&E agrees should be unredacted as set forth in its reply table. This revised document shall be filed with the Docket Office on or

before May 5, 2003, and a notice of availability of the revised document shall be served on the R.01-10-024 service list.

IT IS ORDERED that:

1. A prehearing conference in this proceeding shall be held on May 19, 2003 at 10:00 a.m. at the Commission's Hearing Room, State Office Building, 505 Van Ness Avenue, San Francisco.
2. Pacific Gas and Electric Company (PG&E) and any other party interested in this proceeding may file a prehearing conference statement with the Docket Office on or before May 14, 2003.
 - a. The prehearing conference statement should address the scope of issues to be covered in this proceeding, whether hearings are necessary, and the proposed schedule for this proceeding.
3. The motion of Southern California Edison Company to intervene and reply to the response of The Utility Reform Network (TURN) is granted.
4. The motion of PG&E for a protective order is granted.
 - a. Attachment 1 of this ruling contains the protective order that shall apply to this proceeding.
5. The motion of PG&E to file certain information under seal is granted as discussed in the text of this ruling.
 - a. PG&E's table in its reply to TURN's response shall serve as the guide to what information should be unredacted from the testimony in support of PG&E's Energy Resource Recovery Account (ERRA) application.
 - b. On or before May 5, 2003, PG&E shall file its revised document in support of its ERRA application reflecting the unredacted information in PG&E's reply table.
 - c. PG&E shall serve a notice of availability of the revised document on the service list in R.01-10-024.

- d. The unredacted testimony in support of PG&E's ERRA application that was submitted for filing under seal on February 3, 2003 shall remain sealed.

6. This ruling shall be served on the service list in R.01-10-024, and that service list shall be used until a new service list is created at the prehearing conference.

Dated April 16, 2003, at San Francisco, California.

/s/ JOHN S. WONG

John S. Wong
Administrative Law Judge

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company
for Adoption of its 2003 Energy Resource
Recovery Account (ERRA) Revenue Requirement
Estimate, and its ERRA Trigger Amount. (U 39 E)

Application 03-02-002

**PROTECTIVE ORDER REGARDING CONFIDENTIALITY OF
PACIFIC GAS AND ELECTRIC COMPANY'S ENERGY
RESOURCE RECOVERY ACCOUNT INFORMATION**

1. This Protective Order shall govern access to and the use of all Pacific Gas and Electric Company (PG&E) Protected Materials and Protected Computer Program Materials in this proceeding as hereinafter defined. Notwithstanding any order terminating this docket, this Protective Order shall remain in effect until, after notice and an opportunity to be heard, it is specifically modified or terminated by the Assigned Commissioner, the Assigned Administrative Law Judge ("Assigned ALJ"), the Law and Motion Judge ("Law and Motion ALJ") or the California Public Utilities Commission ("CPUC" or "Commission"). This Protective Order does not address the right of employees of the Commission acting in their official capacities to view Protected Materials, because Commission employees are entitled to view such Protected Materials in accordance with the requirements of Section 583 of the Public Utilities Code and the Commission's General Order 66-C and, as applicable, Section 454.5(g) of the Public Utilities Code.

2. Under Decision (D.) 02-10-062 establishment of the Energy Resources Recovery Account ("ERRA") mechanism and application schedule, this proceeding will be devoted to a review of PG&E's 2003 energy procurement forecast and ERRA 2003 estimated revenue requirement and PG&E's ERRA

Trigger Amount. The amount of data that is confidential or proprietary may differ from time to time. If disagreements arise over whether information should be subject to the protections of the Protective Order, the parties are to work cooperatively with the Assigned ALJ, the Law and Motion ALJ, the Assigned Commissioner or the full Commission, as the case may be, to devise and implement resolution of the differences, and such modifications as may be necessary to the Protective Order in as timely a manner as possible.

3. Definitions. The terms in this Protective Order shall have a meaning consistent with the ideas set forth in Appendix A hereto, entitled "Procurement Planning and Forecasts." The term "Procurement Plan" means the type of plan for evaluating, identifying and purchasing energy and/or capacity, managing long positions, dispatching resources, obtaining or managing gas transportation or storage, hedging activities, administering and dispatching Department of Water Resources long-term contracts set forth in Appendix A.

- a. The term "redacted" refers to situations in which confidential, commercially sensitive or proprietary information in a document, whether the document is in paper or electronic form, has been covered, masked or blocked out. Thus, the "redacted version" of a document is one in which the document is complete except that the confidential, commercially sensitive or proprietary information contained therein is not visible because it has been covered, masked or blocked out. The term "unredacted" refers to situations in which confidential or proprietary information in a document, whether in paper or electronic form, has not been covered, masked or blocked out. Thus, the "unredacted version" of a document is one in which the document is complete, and the confidential or proprietary information contained therein is visible.
- b. The term "Protected Materials" means the confidential or proprietary information contained in the unredacted version, and not contained in the redacted version, of any of the following: (i) any testimony provided in this proceeding, (ii) any workpapers provided in this

- proceeding, (iii) any data request or data response provided in this proceeding, (iv) any pleading provided in this proceeding, (v) any document provided in this proceeding.
- c. Protected Material shall also include (i) any information contained in or obtained from the unredacted materials described in the preceding paragraph, (ii) any other materials that are made subject to this Protective Order by any Assigned ALJ, Law and Motion ALJ, or Assigned Commissioner, or by the CPUC or any court or other body having appropriate authority, (iii) notes of Protected Materials, and (iv) copies of Protected Materials. All parties, including Commission Staff, when creating any Protected Materials, shall physically mark such materials on each page (or in the case of materials such as computer diskettes, on each item) as "PROTECTED MATERIALS" or words of similar import as long as one or more of the terms "Protected Materials," "Section 583," "Section 454.5(g)," or "General Order No. 66-C" is included in the designation to indicate that the materials in question are Protected Materials.
 - d. The term "Notes of Protected Materials" means memoranda, handwritten notes, or any other form of information (including information in electronic form) that copies or discloses materials described in Paragraph 3(b). Except as specifically provided otherwise in this Order, notes of Protected Materials are subject to the same restrictions as are Protected Materials.
 - e. Protected Materials shall not include (i) any information or document contained in the public files of the CPUC or any other state or federal agency, or in any state or federal court, unless such information or document has been determined to be protected by such agency or court, or (ii) information that is public knowledge, or which becomes public knowledge, other than through disclosure in violation of this Protective Order.
 - f. The term "Non-Disclosure Certificate" shall mean the certificate annexed hereto as Appendix B by which persons who have been granted access to the Protected Materials of PG&E shall, as a condition of such access, certify their understanding that such access is provided pursuant to the terms and restrictions of this Protective Order, and that such persons have read such Protective Order and agree to be bound by

- it. All Non-Disclosure Certificates shall be sent to and retained by PG&E.
- g. The term Non-Market Participating Party (“NMPP”) Reviewing Representative shall mean a person who is:
- 1) An employee of: (A) a state governmental agency that (I) is not a Market Participating Party as defined in Paragraph 3(h)(1) hereof, and (II) is statutorily authorized to obtain access to confidential data held by another state governmental agency upon execution of a written agreement to treat the data so obtained as confidential, as provided in Government Code Section 6254.5(e); or (B) any other consumer or customer group that PG&E and the Director of the Commission's Energy Division or his designee (“Division Director”) agree has a bona fide interest in participating on behalf of end-use customers in PG&E regulatory proceedings on ratemaking and electric procurement by PG&E, and which group is not a Market Participating Party as defined in paragraph 3(h)(1); or
 - 2) An attorney, paralegal, expert or employee of an expert retained by a NMPP for the purpose of advising, preparing for or participating in the proceeding in this docket.
 - 3) NMPPs shall identify their proposed Reviewing Representatives to PG&E and Division Director and provide a curriculum vitae of the candidate, including a brief description of the candidate’s professional experience and past and present professional affiliations for the last 10 years. PG&E shall advise the proposing party in writing within seven business days from receipt of the notice if it objects to the proposed Reviewing Representative, setting forth in detail the reasons therefore. In the event of such objection, the proposing party, PG&E and the Division Director shall promptly meet and confer to try to resolve the issue, and if necessary seek a ruling from either the Assigned ALJ or the Law and Motion ALJ. In addition to determining whether the proposed Reviewing Representative has a need to know, the ALJ in ruling on the issue will evaluate whether the candidate is engaged in the purchase, sale or marketing of energy or

capacity (or the direct supervision of any employee(s) whose duties include such activities), or the bidding on or purchasing of power plants or consulting on such matters (or the direct supervision of any employee(s) whose duties include such bidding, purchasing or consulting). Absent unusual circumstances as determined by the ALJ, a candidate who falls within the criteria set forth in the preceding sentence will ordinarily be deemed ineligible to serve as a NMPP Reviewing Representative. Persons who have represented members of PG&E Procurement Review Group in PRG meetings prior to February 3, 2003, and continue to represent members of the PRG, may initially qualify as NMPP Reviewing Representatives based on their prior participation on PG&E's PRG, provided the individual executes the required nondisclosure documents in this proceeding as required by Paragraph 11 hereof.

- h. The term Market Participating Party ("MPP") Reviewing Representative shall mean a person who is:
 - 1) An employee of a private, municipal, state or federal entity that engages in the purchase, sale or marketing of energy or capacity, or the bidding on or purchasing of power plants, or the bidding on or purchase of electric transmission resources, or the purchase, sale or marketing of natural gas, or the bidding on or purchase of natural gas transportation or storage, or hedging activities, or consulting on one or more of the foregoing matters, or an employee of a trade association comprised of such entities that engage in one or more of such activities; or
 - 2) An attorney, paralegal, expert or employee of an expert retained by a MPP for the purpose of advising, preparing for or participating in Procurement Plan and Compliance Reviews regarding PG&E, or ERRA proceedings regarding PG&E.
- i. The term Market Participating Party (MPP) shall mean a private, municipal, state or federal entity that engages in the purchase, sale or marketing of energy or capacity, or the bidding on or purchasing of power plants, or the bidding on or purchase of electric transmission

- resources, or the purchase, sale or marketing of natural gas, or the bidding on or purchase of natural gas transportation or storage, or hedging activities, or consulting on one or more of the foregoing matters, or a trade association comprised of such entities that engage in one or more of such activities.
- j. The term Protected Computer Program Materials means the confidential and proprietary trade secret information, including without limitation databases, models, programs, software, algorithms, input sets, documentation (including any users' manuals, users' guides, training materials, and other materials for use in conjunction with running the models or program), and other materials, including any documents prepared by PG&E that reproduce, in whole or in part, those models, programs, software, algorithms, input sets, documentation, that are (i) subject to protections for such information in the licensing agreement with third party owners of the confidential and proprietary trade secret information; or (ii) entitled to protection as confidential and proprietary trade secret information, including without limitation databases, models, programs, software, algorithms, input sets, documentation (including any users' manuals, users' guides, training materials, and other materials for use in conjunction with running the models or program), and other materials, including any documents prepared by PG&E that reproduce, in whole or in part, those models, programs, software, algorithms, input sets, and documentation, that are owned by PG&E as a result of PG&E developing, directly or indirectly, in whole or in part, the confidential and proprietary trade secret information.
- k. The term "Computer Non-Disclosure Certificate" shall mean the certificate (i) annexed hereto as Appendix C by which parties certify their understanding that access to PG&E Protected Computer Program material is provided pursuant to the terms and restrictions of this Protective Order, and that such persons have read such Protective Order and agree to be bound by it, or (ii) established for a nondisclosure agreement that is developed for Protected Computer Program Material subject to a third party licensing agreement pursuant to Paragraph 22 below. All Computer Non-Disclosure Certificates shall be sent to and retained by PG&E.

4. Access of NMPP Reviewing Representatives to Protected Materials shall be granted only pursuant to the terms of this Protective Order. Participants in this proceeding who are MPP Reviewing Representatives shall not be granted access to Protected Material, but shall instead be limited to reviewing redacted versions of documents that contain Protected Material.

5. Whenever PG&E submits a document in this proceeding that includes data that PG&E contends is confidential or proprietary, PG&E shall also prepare a redacted version of such document. The redacted version shall be sufficiently detailed in organization so that persons familiar with this proceeding can determine with reasonable certainty the nature (but not the magnitude) of the data that has been redacted. The redacted version of any document required by this paragraph shall be served on all parties on the service list (or, in the case of discovery, on all persons entitled to the discovery responses) who are not entitled to obtain access to Protected Material hereunder. All disputes regarding redacted versions of documents shall be submitted for resolution to the CPUC in accordance with Paragraph 13 of this Protective Order.

6. Within thirty (30) days after (a) the issuance of a Commission resolution regarding the ERRA revenue requirement in this proceeding, or (b) the date on which the final Commission decision is no longer subject to judicial review, a NMPP Reviewing Representative shall, if requested to do so in writing by PG&E, return or destroy the Protected Materials. Within the same 30-day time period, the NMPP Reviewing Representative shall also submit to PG&E an affidavit stating that, to the best of the NMPP Reviewing Representative's knowledge, all Protected Materials subject to the request have been returned or destroyed. Notwithstanding the two preceding sentences, the NMPP Reviewing Representative may retain Notes of Protected Materials and copies of filings,

official transcripts and exhibits, if any, prepared in the course of the NMPP Reviewing Representative's review of the Protected Materials, provided that such retained materials are maintained in accordance with Paragraphs 9 and 12 below. To the extent that Protected Materials are not returned or destroyed pursuant to this paragraph, they shall remain subject to this Protective Order, Section 583 of the California Public Utilities Code and CPUC General Order No. 66-C.

7. In the event that the CPUC receives a request for a copy of or access to Protected Material from a state governmental agency that is authorized to enter into a written agreement sufficient to satisfy the requirements for maintaining confidentiality set forth in Government Code Section 6254.5(e), the CPUC may, after giving written notice to PG&E of the request, release such Protected Material to the requesting governmental agency, upon receiving from the requesting agency an executed Interagency Confidentiality Agreement that is otherwise substantively identical to the draft agreement set forth in Appendix B; *i.e.*, identical as to legal principles but with variations in language that are necessary due to the particular situation of the requesting agency.

8. If a request is made pursuant to the Public Records Act ("PRA"), Government Code § 6250, *et seq.*, that Protected Materials filed with or otherwise in the possession of the CPUC be produced, the CPUC will notify PG&E of the PRA request and will notify the requester that the Protected Materials are public records that fall within the exclusions listed in Section 2 of General Order No. 66(c), and/or that there is a public interest served by withholding the records. *See* paragraphs 2.2 and 3.3 of General Order No. 66-C. In the event the CPUC receives a request from a federal governmental agency or via a judicial subpoena for the production of Protected Materials in the CPUC's possession, the

CPUC will also notify PG&E of such request. In the event that a PRA requester brings suit to compel disclosure of Protected Materials, the CPUC will promptly notify PG&E of such suit, and Commission Staff and PG&E shall cooperate in opposing the suit.

9. Protected Materials shall be treated as confidential by each NMPP Reviewing Representative in accordance with the certificate executed pursuant to Paragraphs 3(f) and 11 hereof. Protected Materials shall not be used except as necessary for the conduct of this proceeding, and shall not be disclosed in any manner to any person except other NMPP Reviewing Representatives who are engaged in this proceeding and need to know the information in order to carry out their responsibilities.

10. It shall be a rebuttable presumption that (i) any study that incorporates, describes or otherwise employs Protected Material in a manner that could reveal all or a part of the Protected Material shall also be considered Protected Material that is subject to Section 583 of the Public Utilities Code, the Commission's General Order 66-C, and this Protective Order. It shall also be a rebuttable presumption that where the inputs to studies or models include Protected Material, or where the outputs of such studies or models reveal such inputs or can be processed to reveal the Protected Material, such inputs and/or outputs shall be considered Protected Material subject to this Protective Order, unless such inputs and/or outputs have been redacted or aggregated to the satisfaction of PG&E. Unless a party, by means of notice and motion, obtains a ruling from the Assigned ALJ or the Law and Motion ALJ holding that the applicable presumption(s) from among the foregoing has been rebutted with respect to the model or study at issue, then any party who devises or propounds a model or study that incorporates, uses or is based upon Protected Material shall label the

model or study “Protected Material,” and it shall be subject to the terms of this Protective Order.

11. No NMPP Reviewing Representative shall be permitted to inspect, participate in discussions regarding, or otherwise be granted access to Protected Materials pursuant to this Protective Order unless such NMPP Reviewing Representative has first executed a Non-Disclosure Certificate and delivered it to PG&E. Attorneys qualified as NMPP Reviewing Representatives shall ensure that persons under their supervision or control comply with this Protective Order.

12. In the event that a NMPP Reviewing Representative to whom Protected Materials are disclosed ceases to be engaged in this proceeding, or is employed or retained for a position whose employer is not qualified to be an NMPP under Paragraph 3(g)(1), then access to Protected Materials by that person shall be terminated. Even if no longer engaged in such reviews, every such person shall continue to be bound by the provisions of this Protective Order and the Non-Disclosure Certificate.

13. All disputes arising under this Protective Order shall be presented for resolution to the Assigned ALJ or the Law and Motion ALJ. Prior to presenting any such dispute to the applicable ALJ, the parties to the dispute shall use their best efforts to resolve it. Neither PG&E nor the Commission Staff waives its right to seek additional administrative or judicial remedies after the Assigned ALJ or the Law and Motion ALJ has made a ruling regarding the dispute.

14. All documents containing Protected Material that are filed with the Commission or served shall be placed in sealed envelopes or otherwise appropriately protected and shall be endorsed to the effect that they are filed or served under seal pursuant to this Protective Order. Such documents shall be

marked with the words “PROTECTED MATERIALS” or one of the other, similar terms set forth in paragraph 3(c) hereof, and shall be served upon all NMPP Reviewing Representatives. Service upon the persons specified in the foregoing sentence may either be (a) by electronic mail in accordance with the electronic service protocols established for this docket, (b) by facsimile, or (c) by U.S. postal mail, (d) by overnight mail, or (e) by messenger service.

15. Nothing in this Protective Order shall be construed as limiting the right of PG&E, Commission Staff, a NMPP or a state governmental agency covered by Paragraph 7 from objecting to the use of Protected Material on any legal ground, such as relevance or privilege.

16. All Protected Materials filed with judicial or administrative bodies other than the Commission, whether in support of or as a part of a motion, brief or other document or pleading, shall be filed and served in sealed envelopes or other appropriate containers bearing prominent markings indicating that the contents include Protected Materials that are subject to this Protective Order.

17. Neither PG&E nor the Commission Staff waives its right to pursue any other legal or equitable remedy that may be available in the event of actual or anticipated disclosure of Protected Materials.

18. PG&E and Commission Staff may agree at any time to remove the “Protected Material” designation from any material if, in their mutual opinion, its confidentiality is no longer required; provided that PG&E and Commission staff may not change the confidential status of Protected Computer Program Materials.

19. Protected Computer Program Material include, without limitation, the following computer databases, models, programs and input data sets owned by the entities indicated: (i) Economic/Demographic Forecasting Models and Data,

owned by DRI/WEFA, Economy.com, and Quantitative Micro Software; (ii) Qualifying Facilities Forecasting System owned by PG&E; (iii) Gen Trader, owned by Power Cost, Inc. These databases, programs, software, computer models, and data sets and certain elements of each contain or constitute confidential and proprietary trade secret information. With respect to the computer models, the Protected Computer Program Material includes the computer models' databases, software, algorithms, and documentation (including any users' manuals, manuals, users' guides, training material and other material for use in connection with running the models or programs) and any documents prepared by PG&E which reproduce, in whole or in part, these models' databases, software, algorithms, and documentation.

20. In addition to Public Utilities Code Section 583 and General Order 66-C, California Public Utilities Code Section 585 and 1822 and Article 17.1 of the Commission's Rules of Practice and Procedure provide for safeguards to protect databases and the computer models and provide for protection of proprietary information.

21. PG&E shall provide to parties, on their request, information describing the operation of protected models, databases, programs and data sets, but PG&E is not required to provide that information in a manner that enables parties to operate the models or programs or manipulate the databases. For purposes of this proceeding, PG&E will perform or have performed runs as may be reasonably requested by parties who do not themselves have licenses of the proprietary information owned by others.

22. Parties may only obtain access to Protected Computer Program Material that contains or constitutes confidential and proprietary trade secret information owned by a third party to the extent allowed under the licensing agreement

between the third party and PG&E for the computer program; provided that nothing in this paragraph permits a MPP Reviewing Representative to access Protected Material that is also Protected Computer Program Material. Access to Protected Computer Program Material under this paragraph is subject to execution of a nondisclosure agreement and certificate by the party and its representative(s) that satisfies the licensing agreement between the third party and PG&E for the computer program.

23. Parties may only obtain access to Protected Computer Program Material that contains or constitutes confidential and proprietary trade secret information owned by PG&E after executing a nondisclosure agreement and certificate attached as Appendix C; provided that nothing in this paragraph permits a MPP Reviewing Representative to access Protected Material that is also Protected Computer Program Material.

24. No person requesting and receiving any Protected Computer Program Material shall copy or reproduce it, or cause to be copied or reproduced any portion of the Protected Computer Program Material in any manner. No person requesting and receiving the Protected Computer Program Material shall disclose or use such information or notes, workpapers, or work product derived from same, except for the purpose of participating in this proceeding, unless otherwise authorized in writing by PG&E for its Protected Computer Program Material, or by the third party owners for their Protected Computer Program Material.

25. No person requesting and receiving any of the Protected Computer Program Material shall disclose it, or notes, workpapers, or work product derived from same to any other person (such as to consultants, expert witnesses, or attorneys) except for purposes of this proceeding, and any such persons shall

be informed of this protective order and agree in writing to be bound by it before receiving such information.

26. Any party who engages a consultant shall be responsible for the acts of such consultant or employee of the consultant and shall be further required to provide a duplicate signed Appendix C to the Assigned ALJ for each consultant and employee given access to Protected Computer Program Materials. The ALJ shall retain as confidential from PG&E and other parties the name of any such consultant or employee of the consultant. Upon the close of the record in this proceeding, the ALJ shall be relieved of his or her obligation to retain the confidentiality of the identity of the consultant or employee of the consultant allowed access to proprietary information, and such identity may become a matter of public record. At the close of the record, a party shall be obligated, at the request of PG&E, to disclose to PG&E the names of all consultants, or employees of consultants who have obtained access to the Protected Computer Program Materials.

27. Any portion of the prepared testimony, workpapers, submissions or pleadings in this application which discloses any of the Protected Computer Program Materials shall be served only upon parties who have signed Exhibit C or other appropriate nondisclosure agreement and certificate under Paragraph 22 as described above, and any such material filed with the Commission shall be tendered in a sealed envelope stating on the outside that it is sealed pursuant to this protective order. Any such prepared testimony or pleading shall include a legend that reads as follows:

WARNING: THIS DOCUMENT OR MATTER CONTAINED IN IT
IS CONFIDENTIAL AND ITS USE IS RESTRICTED IN
ACCORDANCE WITH THE [DATE] PROTECTIVE ORDER OF
THE CALIFORNIA PUBLIC UTILITIES COMMISSION IN

APPLICATION NO. 03-02-002. THE VIEWING, DISSEMINATION, RECORDING, OR COPYING OF THIS DOCUMENT, EXCEPT AS AUTHORIZED BY THE PROTECTIVE ORDER, IS A VIOLATION OF AN ORDER OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION. IT IS A VIOLATION OF THE PROTECTIVE ORDER TO SEPARATE THIS PAGE FROM THE DOCUMENT TO WHICH IT IS AFFIXED.

Service upon the persons specified in this paragraph may either be (a) by electronic mail in accordance with electronic service protocols established for this docket, (b) by facsimile, (c) by U.S. postal mail, d) by overnight mail, or e) by messenger service.

28. Within 30 days of the date that the final order of the Commission in this proceeding is no longer subject to judicial review, all parties, including the Commission and any Commission employees, shall return to PG&E the Protected Computer Program Materials, except that a party may destroy any notes or other materials not returned and shall, within the 30-day period, certify to PG&E and any third party owners that the same have been destroyed.

29. The owners of any third party Protected Computer Program Materials are hereby made parties to this proceeding with the right to enforce this order. Nothing in this section shall be deemed to limit their rights or remedies otherwise available under the law. The obligations pertaining to confidentiality of the proprietary information shall survive the termination of this proceeding.

30. The provisions of Paragraphs 13, 15, 16, and 17 of this Protective Order concerning resolution of disputes, objections, filings with other bodies, and remedies for disclosure shall apply to Protected Computer Program Material and to all parties with respect to Protected Computer Program Material.

Dated April 16, 2003, at San Francisco, California.

/s/ JOHN S. WONG

John S. Wong
Administrative Law Judge

APPENDIX A

PROCUREMENT PLANNING AND FORECASTS

Procurement planning and forecasts are reflected in the ERRA filing and the ERRA revenue requirement request in this proceeding. The major elements of the procurement plan and forecasts that give rise to Protected Materials and that involve Protected Computer Materials are described in this Appendix.

Identification of PG&E's forecast range of residual net short requirements and long positions. This area identifies the forecast ranges of PG&E's residual net-short and long positions by various time periods over the test period. The analysis begins by identifying customer electricity demands that reflects the impacts of demand-side management, direct access, and self-generation. The next step consists of identifying the likely ranges of previously committed supply resources including the levels of production from URG, DWR long-term contracts, purchase power agreements, qualifying facilities, without limitation.

Identification of Available Potential Options and Assessment of Risks and Alternative Portfolio Diversification Strategies. This activity identifies a flexible range of products for filling a diversified portfolio of resources to meet the residual net-short requirements and to manage the long positions. It also identifies the manner in which risks are to be assessed and taken into account in making procurement decisions.

Procurement Methods and Transaction Standards to be followed for the various types of products to be procured. This identifies the types of procurement procedures to be conducted for each product.

Identification of the Scope of Applicability of the Procurement Forecasts. This process identifies the range of basic assumptions over which the forecast can be expected to function reasonably well. It will identify certain pre-

approved trigger values in the range of these parameters that would automatically trigger the emergency filing of a revised procurement plan or emergency ERRA trigger filing.

APPENDIX B

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company
for Adoption of its 2003 Energy Resource
Recovery Account (ERRA) Revenue Requirement
Estimate, and its ERRA Trigger Amount. (U 39 E)

Application 03-02-002

NON-DISCLOSURE CERTIFICATE

I, _____, have been asked by _____ to inspect certain materials that have been designated as “Protected Materials” under Paragraph ____ of the Protective Order entered in the above-captioned matter on _____, 2003 (the “Order”).

1. I hereby certify my understanding that access to Protected Materials is provided to me pursuant to the terms and restrictions of the Order in this proceeding, that I have been given a copy of and have read the Order, and that I agree to be bound by it. I understand that the contents of the Protected Materials, any notes or other memoranda, or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with the Order. I acknowledge that a violation of this certificate constitutes a violation of an order of the California Public Utilities Commission.

2. I understand that my review of Protected Materials is solely for the purpose of participating in the above-captioned matter, and that any other use or disclosure of Protected Materials by me is a violation of the Order.

3. I hereby agree to submit to the exclusive jurisdiction of the California Public Utilities Commission for the enforcement of the undertakings I have made hereby and I waive any objection to venue laid with the Commission for enforcement of the Order.

By: _____

Name: _____

Representing: _____

Employer: _____

Position: _____

Business Address: _____

Business Phone: _____

APPENDIX C

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company
for Adoption of its 2003 Energy Resource
Recovery Account (ERRA) Revenue Requirement
Estimate, and its ERRA Trigger Amount. (U 39 E)

Application 03-02-002

Agreement To Be Bound By Rule 74.7 Protective Order

I certify my understanding that (1) my access to PG&E Protected Computer Program Materials, as provided in the protective order in Application 03-02-002, is provided to me pursuant to the terms and restrictions of that protective order, and (2) I have been given a copy of, and have read, that protective order and agree to be bound by it. I understand the PG&E Protected Computer Program Materials, or any notes, documents, memoranda containing such PG&E Protected Computer Program Materials, (a) shall not be disclosed to anyone other than in accordance with that protective order, and (b) shall and may be used only for the purposes of the proceeding in Application 03-02-002. I agree that my obligation to honor the confidentiality of PG&E Protected Computer Program Materials shall continue after the issuance of a final, non-appealable order disposing of the merits of Application 03-02-002. I acknowledge that a violation of this certificate constitutes a violation of an order of the California Public Utilities Commission.

Signature

Name: _____

Reviewing Party: _____

Employer: _____

Position: _____

Business Address: _____

Business Phone: _____

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Regarding Various Motions and Notice of Prehearing Conference on all parties of record in this proceeding or their attorneys of record and in R.01-10-024 or their attorneys of record.

Dated April 16, 2003, at San Francisco, California.

/s/ TERESITA C. GALLARDO
Teresita C. Gallardo

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.

